

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1083 of 2012

Arising Out of PS. Case No.-405 Year-2011 Thana- BEGUSARAI TOWN District- Begusarai

1. Vikram Kumar @ Bittu
2. Vivek Kumar @ Kari

Both are son of Chandrabhushan Singh, Resident of Harakkh, P.S. Town,
District- Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 1153 of 2012

Arising Out of PS. Case No.-405 Year-2011 Thana- BEGUSARAI TOWN District- Begusarai

Ajay Kumar Jha @ Sonu, son of Sri Gauri Shankar Jha, resident of village-
Kalia, P.S. Bhagwanpur, District- Begusarai at present resident of village-
Harakkh, back side of Alaka Cinema, P.S. Begusarai Town, District-
Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 1083 of 2012) With Cr. Appeal (DB) No. 1153 of 2012

For the Appellant/s	:	Mr. Surendra Singh, Advocate
	:	Mr. Vikaram Dev Singh, Advocate
	:	Ms. Nutan Sahay, Advocate
	:	Mr. Jitendra Pd. Singh, Advocate

For the State	:	Mr. Ashwani Kumar Sinha (Adv)
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For the Informant	:	Mr. Gopal Pd. Roy, Advocate
	:	Ms. Anita Kumari Singh, Adv.
	:	Mr. Anuja Shree Roy, Adv.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 22-06-2018

Heard parties.

2. These two Criminal appeals being Criminal Appeal



No. 1083 of 2012 (D.B) and Criminal Appeal No. 1153 of 2012 (D.B.) have been filed by three appellants. 1st Criminal Appeal on behalf of Bikram Kumar @ Bittu and Vivek Kumar @ Kari and 2nd Criminal Appeal filed on behalf of Ajay Kumar Jha @ Sonu against the judgement and order of conviction dated 09.10.2012 and order of sentence dated 11.10.2012 passed by 3rd Additional Sessions Judge, Begusarai in Sessions Trial No. 1081 of 2011 arising out of Begusarai P.S. Case No. 405 of 2011 whereby and whereunder appellants have been convicted under Section 364 (A) and 302/34 of Indian penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs. 1000/- each and in default of fine to further go simple imprisonment for one month. The appellants have been further convicted under Sections 120B of I.P.C. and sentenced to undergo rigorous imprisonment for two years. Both sentences to run concurrently.

3. Briefly stated, the prosecution case is that informant Rajeev Kumar Singh submitted a written complaint before the Officer-in-charge on 24.10.2011 at about 7:00 PM giving rise to Sanha stating therein that his son Rishav Kumar @ Anshu aged about 7 years who was student of Anglo Indian School, Harrkh did not return home from the school and subsequently when the child was not recovered on 25.10.2011 the Sanha was converted



into FIR giving rise to Begusarai P.S. Case No. 405/2011 registered under Sections 363 and 365 of I.P.C. against unknown and in course of investigation the dead body of said child was recovered on 26.10.2011 and accordingly Sections 364, 302/34 and 120B of IPC was added in the FIR. On completion of investigation police submitted charge sheet under Sections 363, 364(A) 302/34 and 120B of IPC against the appellants. Charges were framed against the appellants under Sections 364(A), 302/34 and 120B of IPC and appellants denied the charges and claimed to be tried.

4. Altogether 14 witnesses have been examined on behalf of prosecution and 27 documentary evidence produced which have been marked as Exhibit-1 to Exhibit-15 and 10 materials exhibits have been produced on behalf of prosecution which have been marked as material exhibit-1 to material exhibit-7. The defence has not examined any oral evidence but have produced two documents marked as Exhibit A and Exhibit B.

5. P.W.-1 is Satish Pd. Singh who is the landlord of the outhouse has stated in his deposition that his outhouse is separate from his residential house which contain three rooms. One room is let-out on rent to Ashutosh Kumar (PW-2). He has



further deposed that on 24.10.2011 at 4:00 PM when he went to his outhouse to feed his cattle, he saw in rental room of Ashutosh Kumar (PW-2), one Ajay Kumar Jha @ Sonu (appellant) with a boy aged about 7 to 8 years. He asked his name then he disclosed his name as Ajay Kumar Jha @ Sonu (appellant) and he said that the boy (since deceased) was his brother. In his further deposition he said that after two days he learnt that a dead body of child is lying in the orchard. He went there and identified as the same boy whom he had seen in rental room of Ashutosh Kumar on 24.10.2011 alongwith Ajay Kumar Jha @ Sonu (appellant). He has further stated that on next day i.e. 25.10.2011 he asked Ashutosh Kumar (PW-2) as to who was the child then he told that he was not aware as he had given the key of the room to Ajay Kumar Jha @ Sonu (appellant). P.W. 1 has been cross-examined by the defence but his testimony could not be discredited. He has recorded his statement before the Police as well as under Section 164 of Cr.P.C. and during trial and his statement has been consistent and without any contradiction as such there is nothing to disbelieve his statement. PW-1 identified Ajay Kumar Jha @ Sonu (appellant) in the dock but could not identify remaining two appellants.

6. P.W.-2 Ashutosh Kumar in his deposition has stated



that he handed over the key of his room to Ajay Kumar Jha @ Sonu (appellant) at 11.30 AM on 24.10.2011 in his office and other accused Vivek Kumar (appellant) was also with him who was riding motorcycle. Ajay Kumar Jha @ Sonu was his friend, he called him on mobile at 9:30 AM that he requires key of his room for 3-4 hours and he agreed and same day at 11.30 AM Ajay Kumar Jha @ Sonu came to his office and he handed over the key of the room to Ajay Kumar Jha @ Sonu (appellant) who was accompanied by Vivek and both of them had come on motorcycle and both went away. In the same evening at 7:30 PM he called Ajay Kumar Jha @ Sonu (appellant) for his key then he told that he was busy and disconnected the phone and on the same day at 8:00 PM Ajay Kumar Jha @ Sonu called him that he is standing in front of his room and to take the key and thereafter he reached there by 8:30 PM and got the key from Ajay Kumar Jha @ Sonu and Ajay Kumar Jha @ Sonu while going away took away a bag with him and he told that Vivek was standing at some distance with his bike and after handing over the key of the room he went away. On the next day morning i.e. 25.10.2011 the land owner Satish Pd. Singh (P.W.1) came and he told him that some of his friend had come yesterday with a boy and on hearing such he called Ajay Kumar



Jha Sonu and asked, that who was the child with him then he told that he was son of his relative and he was accompanying him to see the town. He further deposed that on 26.10.2011 at 8:15 PM Ajay Kumar Jha @ Sonu (appellant) called him on mobile and tried to talk with him regarding murder of some child but he did not took any interest and disconnected the phone. After 15 minutes Ajay Kumar Jha @ Sonu (appellant) again called him on phone and said that by keeping him in dark Vivek and Bittu (appellants) have killed a child in the Orchard and he further stated that Vivek and Bikram (appellants) had promised to pay Rs. 1 lakh but did not give anything and said to kill the child otherwise all will be implicated and thereafter he alongwith Vivek and Bikram (appellants) killed the child. Similar statement of PW-2 was recorded before the Police, U/s 164 Cr.P.C. and in the trial court and his statement has been consistent and without any contradiction and he has been cross-examined by the defence but he has stood the test of cross-examination and his statement is reliable and acceptable. PW-2 identified Ajay Kumar Jha @ Sonu (appellant) in the dock but could not identify remaining two appellants.

7. P.W. 3- Md. Sabir Ansari in his deposition has stated that on 24.10.2011 he was going to his shop from his residence



and when he reached near Anglo Indian School then he saw Ajay Kumar Jha @ Sonu (appellant) was talking with deceased Rishav Raj @ Anshu outside the school near gate of the school at about 12.30 PM. 2-3 persons were also standing near him whom he could not recognize, he thereafter proceeded to his shop in Alka Market, deceased Rishav Raj used to come to his shop alongwith his father, therefore he knew him. The age of Rishav Raj would be 5-6 years. PW-3 has been cross-examined by the defence but there is nothing to discredit his evidence. PW-3 identified Ajay Kumar Jha @ Sonu (appellant) in the dock but could not identify remaining two appellants.

8. P.W.4 is Bindu Kumar who has proved the material exhibit which was brought from the Malkhana of police station. All have been marked as material exhibits.

9. P.W. 5- Ranjit Kumar Singh in his deposition has stated that on 24.10.2011 at 12.45 PM he had gone to BCC Petrol Pump which is situated in Begusarai on highway where he saw three boys standing with a child and talking to him. The child was in the school dress, he took petrol and was returning back then he again saw that those persons sat on the motorcycle with the child and all three went away. On 05.11.2011 between 3.15 to 3.30 PM when he was returning to his home from



Market and was crossing over bridge then he saw a mob there and police jeep and saw that police personnel has recovered a school bag and when it was opened a photograph of a child, one book and four copies were found inside the bag. When he saw the photo he immediately recognize that it was the same child whom he had seen at the Petrol Pump. He told the police Officer that he had seen that boy on 24.10.2011 at the Petrol Pump alongwith three persons and who were in police custody and police prepared a seizure list there and he became a witness on seizure list and has proved the seizure list which has been marked as Exhibit-2 and signature of other witness has been marked as Exhibit-2/1 and he recognize the same in the court room which has been marked as material exhibit-1 and 3, 3/1, 3/2 and 3/3 and photograph of the boy has been marked as Exhibit-4. The Investigating Officer (PW-13) in his deposition has denied that PW-5 had disclosed to him that he saw three appellants alongwith deceased boy on the petrol pump. He has further denied that any statement has been recorded by him of P.W. 5 and he is only a seizure-list witness. The deposition of PW-5 that he saw three appellants alongwith deceased boy at the petrol pump cannot be believed as no such statement was recorded by the I.O. (PW-13) during course of investigation. No



reliance can be placed upon his evidence.

10. P.W. 6- is formal witness who has brought shoes which has been marked as material exhibit.

11. P.W.-7 is Manoj Singh who in his deposition has stated that on 24.10.2011 his nephew Rishav Raj had gone to School but did not return. He came to know about it at 8:00PM in the night when he went to the house of his brother. His Bhabhi has stated on 24.10.2011 that one week before Sonu had met his son in the school and had asked to sit on his motorcycle and he will drop him to his house but Rishav Raj @ Anshu refused to go to home on motorcycle of Sonu. On 23.10.2011 also he had gone to the house of his brother on that day also he saw that Sonu and his two associates took Rishav Raj @ Anshu in the lane and had given a toffee to Rishav Raj @ Anshu and thereafter Ajay Kumar Jha @ Sonu accompanied with his two associates (appellants) went to the shop of his father. He was witnessing all these events standing near the house of his brother. He came to know about incident on 24.10.2011 in the night and thereafter made search for Rishabh Raj @ Anshu at various places who were known to him and meanwhile shopkeeper Sabir Ansari met and told him that at about 12:30 while he was passing near the school he saw Ajay Kumar Jha



@ Sonu was talking with Anshu on 24.10.2011 and his two associates were also with him. He can recognize them they are in the dock.

12. P.W.-8 Ritesh Kumar in his deposition has stated that on 24.10.2011 he was going to Balia and proceeded on motorcycle from his house. He had to purchase motorcycle from Balia and when he reached near the clinic of doctor Indira, the engine of his motorcycle failed and he tried to start his motorcycle when he saw a motorcycle with two persons and one child coming on motorcycle. After sometime his motorcycle started and he went towards Balia. Thereafter on 05.11.2011 between 2.30 PM to 3:00 PM he was returning to his home from Ramgiri after meeting his friend on motorcycle and as he reached Ratanpur, he saw a police jeep standing by the side of road. On seeing the mob he stopped there and found that three persons whom he had seen were in police custody. Police took all the three in the Rahar Field and Vivek Kumar @ Kari took out a pair of black shoes and gave it to the police and seizure list was prepared and he put his signature on it which was marked as Exhibit-2/2 and pair of shoes recovered were marked as material exhibit V. He recognized all three accused standing in the dock. He further deposed that he had not made any



statement before the police and was only witness of seizure list. After 05.11.2011 police had called him in police station, there he put his signature on a written paper. He has further deposed that he has read in newspaper that on 25th or 26th a child was kidnapped and his photograph was also there. From 25.10.2011 to 04.11.2011 he remained in his house and only visited the market. He seldom visits Harrat Mohalla. The child was wearing fullpant and shirt. He does not remember whether shirt was light blue or not. The complexion of the child was dark. The statement of PW-8 was not recorded by the police during investigation and he was only a seizure list witness, as such, his statement that while he was going to Balia to purchase motorcycle, he saw the deceased child with the three appellants on 24.10.2011 is not trustworthy. He is only a seizure-list witness.

13. P.W. 9- Sangeeta Singh in her deposition has stated that on 24.10.2011 his son in a routine manner took his breakfast and went to Anglo Indian Public School, Harrat, Begusarai. He was student of class-I. He left for school at 7.30 AM and he did not return after school then she called on her husband on phone. He went to school. Teacher of school said that he was in school and proceeded towards his home after



school was over. Her husband searched but he could not be traced and thereafter her husband informed the police. One week prior to incident Rishabh Raj @ Anshu told her that Ajay Kumar Jha @ Sonu had asked him to sit on his motorcycle and he will drop him to his house but he refused and came with his friend. One day prior to the incident at about 4:35 PM his son was riding cycle on the road. Ajay Kumar Jha @ Sonu called Rishabh Raj @ Anshu and gave toffee to Rishabh Raj @ Anshu. Thereafter Ajay Kumar Jha @ Sonu and his two associates went away towards the shop of his father. On 26.10.2011 in the night she came to know that in Ratanpur, Bishanpur orchard dead body of Anshu has been found. On 24.10.2011 when Anshu went to school he had one school bag in which pencil, copy and books and his one photo was there. She identified the three accused standing in the dock. She further stated that her husband is a employee in India Info lines and his salary is Rs. 10,000/- and there is no saving as whole salary is spent in monthly expenses. School is over by 12.30 PM. He used to go and come school with other students of locality and prior to incident Anshu never reached late and he used to come by 12.40 PM. She went to school at 2:00 PM and Principal said that Anshu was in the school. Similar statement was made by PW-9



before the Police as well as U/s 164 of Cr.P.C. and during trial and her deposition has been consistent and there is nothing to doubt the veracity of her deposition.

14. P.W. 10. Dr. Nawal Kishan has stated in his deposition that on 26.10.2011 he was posted at Sidan Hospital, Begusarai as Medical Officer and at about 8:10 PM he conducted postmortem of Rishav Raj @ Anshu and he found sharp cutting injury on his body and neck and time elapsed since death was 18 to 36 hours.

15. P.W. 11- Suresh Ram BDO, Begusarai Sadar conducted identification parade in his supervision and articles of deceased Anshu such as bags, books and copies and his photograph which were identified by father of deceased Rajeev Kumar Singh (informant) and Sangeeta Singh, mother of the deceased which were kept alongwith five to six similar looking objects.

16. P.W.12 Rajeev Kumar Singh in his deposition has stated that on 24.10.2011 his son left for school at 7:30 AM but he did not return till 12.45 PM and he received call from his wife on mobile At that time he was in his office which is opposite to G.D. college and his wife told that Rishav Raj @ Anshu has not returned from the school. He thereafter came out



from his office and proceeded for school of Anshu on motorcycle and there were no students were present there only Principal and teachers were there. Principal told that Rishav Raj was there till 12.30 PM and he saw him going outside the gate at about 12.30 PM and thereafter started searching his son but he could not be traced. At about 7-8 PM he went to the police station and lodged a complaint about his missing, which has been marked as Exhibit-5. On 26.10.2011 he received an information from police station at 5:00 PM that a dead body of a child has been found in Ratanpur Bishanpur orchard and thereafter he took his elder brother Manoj Kumar Singh and reached there and found the dead body of his son Anshu, police was also there. Police prepared a inquest report on which he and his brother Manoj Kumar Singh put their signature which has been marked as Exhibit 6 and 6/1. On 30.11.2011 he received an information from police station that shoes and bag of his son has been recovered. On 30.11.2011 at about 2:30 PM he reached the police station where B.D.O. of Begusarai was also present and he identified the bag among 5 to 6 bags kept there and also identified the same in the court room and B.D.O. prepared a T.I.P. report, upon which he put his signature which has been marked as Exhibit-4.



17. P.W. 13 is Raj Narayan Akela (I.O.), who in his deposition has stated that he was posted in the Begusarai Town P.S. on 25.10.2011 and he was given investigation of P.S. Case No. 405/11 and he assumed investigation of the case instituted under Sections 363 and 365. After assuming the investigation of the case he recorded statement of Sangita Singh. He inspected the place of occurrence and recorded statement of Manoj Singh brother of informant, Md. Sabir Ansari, Sanjay Kumar Rai. He was informed by the Officer-in-charge on 26.10.2011 that one dead body is lying in the Ratanpur Bishanpur Orchard and in order to confirm he proceeded towards the orchard and found that a crowd has gathered there. Informant and his brother Manoj Singh were present there and identified dead body as of Rishab Raj @ Anshu. He prepared the inquest report (Exhibit-9) and sent the body for postmortem. Thereafter he filed a petition to add sections 364, 302 and 120B of IPC in the FIR. To help the investigation, sniffer dog was called from Jamui. The Sniffer dog from the place where dead body was found moved and sat in front of room which was locked and thereafter went in the Rahar field and from there to the house of one Chiranjivi Kumar and he was arrested. Landlord of house where sniffer dog sat was Satish Prasad Singh (P.W.-1) and his statement was



recorded and name of the tenant was Ashutosh Kumar (PW-2) and on the basis of statement made by them Ajay Kumar Jha @ Sonu was arrested. Ajay Kumar Jha @ Sonu confessed this crime and he recorded his confession (Exhibit-11) and arrested Vivek and Bikram on the basis of statement of Ashutosh. Vivek Kumar also confessed his crime and his confession (Exhibit-11/1) was recorded by him. On the basis of confession made by Sonu and Vivek Kumar the school bag containing copy, book and photo of deceased was recovered beneath the overbridge and seizure-list (Exhibit-12) was prepared in presence of two witnesses Ranjit Kumar and Shambhu Kumar. From the place disclosed by Vivek, shoe of the deceased was recovered from the Rahar field near the house of Ashutosh and same was seized and seizure-list (Exhibit-12/2) prepared.

18. Bikram also confessed his crime and his confessional statement (Exhibit 11/2) was recorded by him. On the basis of confessional statement of Bikram the knife used for committing murder of deceased was searched from the field surrounded by the boundary wall near Professor Colony but same could not be recovered. The house of Bikram and Vivek was raided and one black colour motorcycle was seized and seizure-list (Exhibit-12/3) prepared. The confessional statement of Sonu and Bikram



was also recorded by the correspondence of ETV which has been marked as material exhibit-7. He has further deposed that he had recorded the statement of Ranjit Kumar Singh and Shambhu Kumar in para 164 and 165 of case diary. The three mobiles which were used by the accused at the time of committing crime its CDR was obtained from the concerned company for the period from 01.10.2011 to 05.11.2011 which are Exhibits- 14 and 14/1. From call details it is established that prior to incident and subsequent to incident they were present at the place of occurrence. Sangita Singh on 25.10.2011 has stated that they do not have any enmity with any one in the locality.

19. PW-14 is Manoj Kumar, who is the Principal of Anglo Indian School and Rishab Raj @ Anshu was student of his school of class-I in the year 2011 and he was present on 24.10.2011 in the school and had left school for home at 12.30 PM after school was over.

20. The three appellants have been convicted on the basis of circumstantial evidence. The prosecution in order to prove the guilt of offence under Section 302 of the IPC has to lead evidence in order to connect all links in the chain which points to the guilt of accused alone and no one else. The Apex Court in the case of **Ramreddy Rajeshkhana Reddy and Anr.**



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172, has held as follows:-

“It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.”

21. The deceased was last seen in the company of appellant Ajay Kumar Jha @ Sonu. The Apex Court in case as referred above (supra) in paragraph No. 27 has held as following:-

“The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration”.

22. Appellants have also been convicted U/s 364A of IPC although no demand of ransom was made. Parents of deceased Rishabh Raj @ Anshu had stated that they had no enmity or dispute with accused or his family as such kidnapping was only for the purpose of ransom but before ransom could be



demanded name of accused surfaced in the crime and police started looking for Ajay Kumar Jha @ Sonu and thereafter dead body was recovered, as such no demand of ransom could be made. The reasons accepted by Trial Court that they could not get the mobile number of father of deceased to demand ransom is not convincing as same is very easy to procure. Accused wanted to demand ransom from outside the locality but same could not materialise. The motive of crime was ransom.

23. After hearing the parties and considering the materials and evidences on record the prosecution has been able to establish following incriminating circumstances:-

(i) Rishab Raj @ Anshu had left for school at 7:30 AM and remained there till closure of school at 12:30 PM and thereafter did not return home.

(ii) Ajay Kumar Jha @ Sonu had called Ashutosh Kumar on mobile at 9:30 AM on 24.10.2011 to get the key of the room from him for which he agreed and thereafter at 11:30 AM Ajay Kumar Jha @ Sonu received the key of room from Ashutosh Kumar and at that time Vivek Kumar @ Kari was with him (corroborated by call details) and thereafter at 12:30 Ajay Kumar Jha @ Sonu was seen by the Sabir Ansari (PW-3) talking to Rishabh Raj @ Anshu outside the school and Ajay



Kumar Jha @ Sonu alongwith his associates kidnapped Rishabh Raj @ Anshu and brought him in the room of Ashutosh Kumar (PW-2).

(iii) At 4:00 PM the land owner of the room Satish Prasad Singh (PW-1) saw Ajay Kumar Jha @ Sonu and deceased Rishabh Raj @ Anshu in the said room. Ashutosh Kumar had called Ajay Kumar Jha @ Sonu for keys of his room at 7:30 PM but he disconnected the phone and said that he will call back and subsequently informed that he was standing outside his room, when Ashutosh Kumar came back at 8:30 PM he received the key of his room and saw Ajay Kumar Jha @ Sonu taking away a bag and also saw Vivek Kumar @ Kari with his motorcycle and both went away(corroborated by call details).

(iv) On the basis of confessional statement made by Ajay Kumar Jha @ Sonu and Vivek Kumar @ Kari, the school bag containing copies, books and photograph of deceased Anshu was recovered from the place as disclosed by them, as such their confessional statement becomes admissible under Section 27 of the Evidence Act.

(v) The Sniffer Dog had also sat outside the room of Ashutosh Kumar in which Ajay Kumar Jha @ Sonu was found



with deceased child at 4:00 PM and the Sniffer Dog had also sat in the khesari field from where subsequently on the confessional statement made by them, shoes of deceased was recovered.

(vi) The deceased-child was murdered after 4 O' Clock when he was last seen alive in the company of Ajay Kumar Jha @ Sonu and before Ashutosh Kumar(PW-2) arrived at his room when he saw Ajay Kumar Jha @ Sonu and Vivek Kumar @ Kari leaving the place on motorcycle and carrying a bag with them which was the School Bag of the deceased which was recovered by the police on the confession of appellants.

(vii). The extra judicial confession made by Ajay Kumar @ Sonu to the Ashutosh Kumar (PW-2) and also before E.T.V. news where their confession was recorded by the E.T.V. Camera man which was also publicly telecasted on E.T.V. News channel.

24. These incriminating circumstances in our view form a complete chain and are consistent with no other hypothesis except the guilt of accused Ajay Kumar Jha @ Sonu and Vivek Kumar @ Kari.

25. However, on the basis of confessional statement made by Vikram, knife used to kill the child was not recovered, as such his statement is not admissible and cannot be relied



upon. Even the last seen evidence the deceased child was in the company of Ajay Kumar Jha @ Sonu at 4 '0' clock and when Ashutosh Kumar came back to his room at 8:30 in between which the child was killed, he saw Ajay Kumar Jha @ Sonu in company of Vivek Kumar @ Kari present there and even in the morning at 11:30 only these two accused were seen by Ashutosh Kumar.

26. From the facts as stated above, the conviction of Ajay Kumar Jha @ Sonu and Vivek Kumar @ Kari is upheld, however, there is no reliable evidence against Vikram @ Bittu, as such, his conviction and sentence is set aside giving him benefit of doubt. Since Ajay Kumar Jha @ Sonu is in jail, he will serve remaining part of his sentence in jail. Vivek Kumar @ Kari was granted bail and his bail bond is cancelled and he shall be taken in custody to serve the remaining sentence in jail. Vikram Kumar @ Bittu has been acquitted of charge and as such he is discharged from liability of bail bond. As a result Criminal Appeal (DB) No. 1153 of 2012 is dismissed and



Criminal Appeal (DB) No. 1083 of 2012 is partly allowed.

(S. Kumar, J)

Dr. Ravi Ranjan, J.: I agree

(Dr. Ravi Ranjan, J)

veena/-

AFR/NAFR	
CAV DATE	01.05.2018
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